

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.As. No. 618/95 & 683/95

Tuesday, this the 25th day of July, 1995

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

O.A. 618/95

Sulaiman N.P.
Extra Departmental Delivery Agent
Chilavu P.O., Thodupuzha
residing at Naduparambil House,
Chilavu P.O., Thodupuzha-685584

Applicant

By Advocate Mr. P.C. Sebastian

vs.

1. The Superintendent of Post Offices
Idukki Division, Thodupuzha 685584
2. The Postmaster General
Central Region, Kochi-682 016
3. Boban K. Mathew,
Extra Departmental Delivery Agent
Chemmannur Kuthungal P.O.
Via Chemmannur, Idukki District

Respondents

By Advocate Mr. Mary Help John David J., ACGSC for R 1 & 2

O.A. 683/95

Shylaja V.P.
Vellooparambil House,
Panoor, Thodupuzha
working as Extra Departmental Branch Postmaster
Chilavu Post Office,
Thodupuzha

Applicant

By Advocate Mr. P.K. Ravisankar

vs.

1. The Superintendent of Post Offices,
Idukki Division, Thodupuzha
2. Boban K. Mathew
Extra Departmental Delivery Agent
Chemmannur Kuthungal P.O.
Via Chemmannur, Idukki District
3. Sulaiman N.P.
Extra Departmental Delivery Agent,
Chilavu P.O., Thodupuzha

Respondents

By Advocate Mr. P.R. Ramachandra Menon for R 1

The application having been heard on 18.7.95
the Tribunal delivered the following on 25.7.95

O R D E R

S.P. BISWAS, ADMINISTRATIVE MEMBER

The questions of law, facts and contentions raised in these two original applications are similar and so are the reliefs sought. They are therefore, disposed of by a common judgment.

2. Shri N. P. Sulaiman and Ms. V.P. Shylaja, applicants in O.As. 618/95 and 683/95 respectively are at present working as Extra Departmental Delivery Agent (EDDA for short) and Extra Departmental Branch Post Master (EDBPM for short) at Chilavu Post Office and both are aggrieved by the appointment of Mr. Boban K. Mathew (respondent 3 and 2 respectively in the above two original applications) as EDBPM, Chilavu ignoring the superior claims of applicants therein.

3. Learned counsel for applicant in O.A. 618/95 argued that the applicant is working in Chilavu post office since 1982 and his claim for posting there as EDBPM is well justified by A1 orders. It has been also contended that his application for change over to the post of EDBPM has not been rejected as yet and that the posting of third respondent to Chilavu is under erroneous presumption of the case being that of a retrenched E.D. Agent.

4. Learned counsel for applicant in O.A. 683/95 submitted that the applicant is working as EDBPM since 12.10.92. She has past experience as a provisional hand and she fulfills educational and residential qualifications prescribed for the post. It is also on account of her abilities that she was given additional work load of Extra Departmental Mail Carrier when the post was abolished, counsel stated. It is her case

that she could provide suitable accommodation for the post office as desired by the department on being selected for the post. As per terms of agreement with the owner, she is liable to give vacant possession of the room back to its owner. Both the applicants have argued that as per existing recruitment rules, EDDAs are not liable nor entitled to be transferred from one post to another. There are only two exceptions to the said rule as mentioned in Annexure A9 orders. Appointment of Boban K. Mathew does not come under any of the said provisions.

5. Learned counsel for respondents submitted that applicant in O.A. 683/95 can't have any legitimate claim to the post as she is only a leave substitute. In respect of applicant in O.A. 618/95, counsel argued that even though the applicant had more service to his credit than the third respondent, the latter was selected by granting him the benefit of his choice station as the appointment granted to him on retrenchment was at an unfavourable place. Respondents would also submit that on the basis of modified A1 orders (Director General (Posts) letter No. 43-27/85-Pen (EDC & Trg) dated 12th September, 1988 amended by order No. 1921/94 ED Trg dated 11.8.94) as shown at R-3 in O.A. 618/95:

"... the Extra Departmental Agents on their requests could be transferred within their recruiting unit. Since the first respondent is the Head of the Postal System of Idukki Division he considered the request of third respondent (Mr. Mathew) as retrenched Extra Departmental Agent and considered his request for transfer to Chilavu."

6. We notice that Annexure A1 orders read with amendments dated 11.8.94 govern the issues regarding transfer of E.D. Agents. These orders do not envisage transfer of EDAs freely from one post to another. However, sub-paras (i)

and (ii) of Director General (Posts)'s order dated 12.9.88 stipulate cases where exception may be made. Neither of the two special provisions mentioned in the above orders cover the present case of transfer of respondent 3 to Chilavu Post Office.

7. Under the existing rules, Respondent-1 (the Superintendent of Post Offices) in charge of the division, is the appointing authority of EDBPMS. Presuming the division as a "recruiting unit" (under the amended provisions) respondent-1 has selected and transferred respondent-3 from Munnar sub-division to Thodupuzha sub-division under the category of a retrenched employee. "Recruitment units" (a new principle introduced by respondents arising out of initiatives taken by this Tribunal in O.A. 325/94) have not been defined, though sub-divisions in charge of an Inspector of Post Offices and or Assistant Superintendents of Post Offices could reasonably be construed as a recruitment unit. It is for the executive authorities to decide such disputed matters. We have however, our own doubt about the correctness of presuming division as a "recruiting unit." That apart, respondent 3 cannot be considered as a retrenched employee as on 1.5.95. When post at Chathurangapara was abolished he was given alternative appointment as Extra Departmental Delivery Agent, Chemmannar Kuthungal with effect from 18.7.94 within the same Munnar sub-division. Under the existing special provisions hardships of retrenched employees are to be mitigated by allowing them to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange.

8. In the instant case, respondent 3 has been transferred to a new place instead of allowing his resettlement in the

place of earlier posting or a place within the previous sub-division.

9. Section 16(2) of the "Method of Recruitment" for EDDAs provides certain other concessions to working E.D. Agents in the matter of selection of various E.D. posts under the following categories:

- "i) E.D. Agents appointed prior to the introduction of the residence condition.
- ii) E.D. Agents who had acquired residences in new locality by purchase or inheritance.
- iii) All women E.D. Agents who have to shift the residence after marriage."

Where the working E.D. Agent is appointed to another E.D. post pursuant to above concessional orders, the appointment orders should specify the following:

- "i) the name of E.D. post in which he/she was working previously
- ii) Date of commencement of continuous service in the above E.D. post;
- iii) Date on which he/she vacated the above E.D. post..."

10. The above directions were issued under letter No. STA/102/6-vi/78 dated 7.11.78 of PMG, Kerala Circle. A-3 transfer order dated 1.5.95 issued by Respondent-I does not adhere to above mentioned directions.

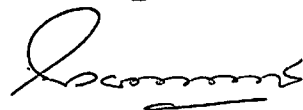
11. There are other apparent infirmities in the handling of this issue. Respondents have not denied that the applicant in O.A. 618/95 is not senior to respondent 3. And yet an EDDA, seven years junior to applicant has been ordered to work as EDBPM-a post that carries higher responsibility as in-charge of such units of Post Offices. Other relevant conditions remaining the same, posting of a junior at the same office over an employee officially accepted as senior would only result in avoidable frustration. This aspect has been ignored.

11. Sequences of steps taken to fill up the post create suspicion in the matter. Representation of respondent 3 for transfer to Chilavu was initially received on 30.11.94. The post was notified in local employment exchange on 13.1.95, presumably after taking a decision on the transfer application of respondent 3 who again represented on 25.1.95. These representations were considered favourably in May, 1995, keeping eyes closed on the selection process initiated in between.

12. In the light of the discussions aforementioned the transfer order dated 1.5.95 issued by respondent -1 in favour of B.K. Mathew is outside the rules, without authority and hence unsustainable. Applications are therefore, allowed to that extent. We make it clear that we have not expressed any opinion on the relative merits or suitability of the applicants for the post of EDBPM, Chilavu. Interim orders dated 30.5.95 (in O.A. 683/95) stands vacated. Respondents will take appropriate actions for filling up the post of EDBPM, Chilavu in accordance with service rules.

Applications are disposed of as aforesaid. No costs.

Dated the 25th July, 1995.



S. P. BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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